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EXAMINER

YAO, SAM CHAUN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 06/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/762,617

Applicant(s)

SQUIRES ET AL.

Examiner

Sam Chuan C. Yao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-19, 21-23, 30-35, 37-44 and 46-83 is/are pending in the application.
- 4a) Of the above claim(s) 39-44, 46-53 and 66-83 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-19, 21-23, 30-35, 37-38 and 54-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION***Election/Restrictions***

Newly submitted claims 66-83 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the elected group I and the newly added group do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features because, taking each recited independent claims as a whole, a common technical feature (i.e. *"one or more characteristics of the two patterns is selected and differentiated in order to control, during lamination, the amount of point misregistration between the emboss pattern on the nonwoven spunbonded polymer fabric with the lamination pattern on the single lamination pattern calender roll and thereby the occurrence of unlaminated patches in the resultant laminate."*) does not provide a contribution over the prior art as exemplified in the teachings of Leak et al (see numbered paragraph 5 on page 4 for detailed discussion).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 66-83 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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2. Claims 2-19, 21-23, 30-35, 37-38, and 54-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 54 and 56 are indefinite because it is unclear what is intended by the phrase "*unlaminated patches*". An ordinary dictionary definition of a term patch is a piece of cloth which is used to cover a hole or holes. Where do these patches come from? Without proper guidance from the original disclosure as to the intended meaning of this phrase, it would be difficult to determine the scope of the recited claims. For the purpose of examining this limitation, "unlaminated patches" are assumed to be blisters on a laminated embossed web. Equally important, there appears to be something is missing in the clause "*thereby the occurrence of unlaminated patches in the resultant laminate.*" Does this clause intended to require having "*unlaminated patches*" in a resultant laminated embossed web? For the purpose of examining this limitation, it is assumed that "*unlaminated patches*" are avoided.

Claim 21 is indefinite because this claim is dependent on a canceled claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 2-6, 8-19, 21-23, 30-34, 54-62 are rejected under 35 U.S.C. 102(b) as being anticipated by Leak et al (US 5,763,041).

With respect to claims 2-6, 8-14, 30-31, 33, and 54, Leak et al discloses a process of making an embossed laminated material, the process comprises providing a spun-bonded polymeric non-woven web (14; taken to be the recited 1st material); providing a thermoplastic non-embossed film (12; taken to be the recited 2nd material); embossing the non-woven material using heated rolls to thermally fused the material to form 1st spaced apart bonded areas; stretching the film; laminating the film and the embossed non-woven web using a pair of laminating rolls to form 2nd spaced apart bonded areas; wherein the 1st spaced apart bonded areas *"comprise from about 3 to about 35", "having a size of from 0.3 to about 2.0 square millimeters"*, and have a bonding *"density from about 5 to about 20"* bonded areas square centimeter; while the 2nd spaced apart bonded areas *"cover from about 5 to about 20 percent"*, *"at least about 75 percent of the second bonded areas have a size of less than about 4 square millimeter"*; have a bonding *"density of greater than about 2 bonds per square centimeter"* ((col. 4 line 16 to col. 6 line 25). In a particular embodiment illustrated in figures 2-3, the 1st spaced apart bonded areas comprise about 10.6 percent, having a size of 0.68 square millimeters, and a bonding *"density from 15.5"* bonded areas square centimeter; while the 2nd spaced apart bonded areas *"cover about 8.0 percent"*, having a size of about 1.0 square millimeter; have a bonding *"density of 8.0 bonded areas per square centimeter"*. It is acknowledge that, it is acknowledge

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that, it is not explicitly disclosed by Leak et al that the embossing and the lamination process prevent the visual occurrence of *"laminated patches"* (i.e. blisters). However, in light of the embodiment shown in figures 2-3 noted above and examples disclosed in column 10 line 45 to column 11 line 53, which clearly shows that the selected embossing and lamination patterns disclosed by Leak et al are different in terms of size, bonding density, bonding area, and/or bonding points configuration/arrangement, the limitation *"one or more characteristics of the two patterns is selected and differentiated in order to control, during lamination, the amount of point misregistration between the emboss pattern on the nonwoven spunbonded polymer fabric with the lamination pattern on the single lamination pattern calender roll and thereby the occurrence of unlaminated patches in the resultant laminate [are avoided]."* (words inserted) inherently flow from teachings of Leak et al.

Note: Where ... the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. **Whether the rejection is based on "inherency" under 35 USC § 102, on prima facie obviousness" under 35 USC § 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO's inability to manufacture products or to obtain and compare prior art products."** In re Best, 562 F2d 1252, 1255, 195 USPQ 430, 433-4 (CCPA 1977).

With respect to claims 15-16 and 55, see column 1 lines 56-59 and column 3 line 67 to column 4 line 1.

With respect to claims 17-19, and 21-23, see column 6 lines 26-36, column 7 lines 21-35, and figure 4.

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With respect to claims 32 and 34, see column 8 lines 33-45.

With respect to claims 56-62, these claims are essentially repeated combination of limitations of the above claims, for essentially the same combination reasons set forth above, these claims would have been obvious in the art.

Allowable Subject Matter

1. Claims 7, 35, 37-38, 57 and 63-65 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

2. The following is a statement of reasons for the indication of allowable subject matter:

There is no suggestion in the prior art to perform the limitations recited in these claims in the process taught by Leak et al.

Response to Arguments

3. Applicant's arguments filed on 04-09-03 have been fully considered but they are not persuasive.

Counsel's arguments regarding WO '687, WO '688 and Ruppel are moot, because the rejections involving these references are withdrawn. However, several claims stand rejected as being anticipated by Leak et al.

Counsel argues in a bottom portion of full paragraph 1 on page 22 that *"There is no mention of any interactions between the lamination points of the lamination pattern of a single lamination pattern calender roll and the emboss points of an emboss bonding pattern of the nonwoven spunbond fabric layer, let alone any*

control of such interactions." (emphasis added). It is respectfully submitted that, Counsel's argument does not appear to be commensurate with the scope of the recited claims. None of the recited claims explicitly requires "*any interaction*" between two bonding patterns. The recited claims as correctly noted by Counsel on page 22 3rd to the last line to page 23 line 2 only require "*one or more characteristics of the two patterns is selected and differentiated in order to control, during lamination, the amount of point misregistration between the emboss pattern on the nonwoven spunbonded polymer fabric with the lamination pattern on the single lamination pattern calender roll and thereby the occurrence of unlaminated patches in the resultant laminate.*". This limitation reads on the embodiments illustrated in figures 2-3 and examples disclosed in column 10 line 45 to column 11 line 53 and figures 7-9, which clearly show that the selected embossing and lamination patterns are different in terms of size, bonding density, bonding area, and bonding points configuration/arrangements. As noted above, the embossing pattern is "varied"/different relative to the lamination pattern in terms of at least one of size, bonding density, bonding area and bonding points configuration/arrangement, so that "*the amount of point misregistration between the emboss pattern ... lamination pattern*" is inherently controlled. It is respectfully submitted that, simply because Leak et al does not use the same terminology as the recited claims in describing the prior art embossing and lamination process, it does not mean that, the recited process limitation is absent, especially when the resultant articles of both processes are

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indistinguishable, and especially when Leak et al clearly teaches an embossing pattern being varied/different relative to the lamination pattern in terms of at least one of size, bonding density, bonding area and bonding points arrangement (figures 2-3, figures 7-9 and examples).

As for Counsel's argument on page 23 that, "... *there is not even an appreciation of the problem which the present invention is seeking to overcome.*". Even for the sake of argument Counsel is correct, such is immaterial, since whatever problems being solved by Applicant's claimed process would be inherently flow from the process taught by Leak et al, because the recited process is indistinguishable from the process taught by Leak et al.

As for Counsel's argument on page 23 last paragraph to page 24 line 3, it would appear that Counsel is mischaracterizing the teachings of Leak et al. Counsel's attention is directed column 4 lines 53-61 and column 6 lines 18-25. There is no way, for an embodiment illustrated in figures 2-3, will "*the characteristics of the two pattern can be **identical***" (bold-face added), because as noted above, the two patterns have different sizes, bonding densities, and bonding areas.

As for Counsel's argument on page 24 1st full paragraph regarding Applicant's laminated article shown in figure 11, Counsel's argument is not commensurate with the scope of the recited claims. The recited claims are NOT limited to an embodiment illustrated in figure 11. The recited claims read on the embossing/lamination process taught by Leak et al.

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Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (703) 308-4788. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W Ball can be reached on (703) 308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7115 for regular communications and (703) 305-7718 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.


Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

scy
May 31, 2003